No. 84-47

In the Supreme Court of the United States

OCTOBER TERM, 1984

GREGORY ALLEN PERSINGER, LAWRENCE PERSINGER AND JACQUELINE PERSINGER, PETITIONERS

v.

ISLAMIC REPUBLIC OF IRAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Islamic Republic of Iran is subject to the jurisdiction of United States courts pursuant to the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. 1330(a), for torts it committed at the United States Embassy in Tehran.

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OPINIONS BELOW

The opinion of the court of appeals on rehearing (Pet. App. 1a-18a) is reported at 729 F.2d 835. The court of appeals' original opinion (Pet. App. 21a-49a), vacated on rehearing, was reported at 690 F.2d 1010 but was withdrawn by the court. The opinion and order of the district court (Pet. App. 53a-57a) are unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1a) was entered on March 13, 1984. On May 23, 1984, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including July 11, 1984, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners are Gregory Allen Persinger, who was seized as a hostage by Iranian militants during the takeover of the United States Embassy in Tehran on November 4, 1979, and his parents. Petitioners commenced this action in the United States District Court for the District of Columbia, seeking redress from Iran for damages stemming from Persinger's captivity at the embassy. Persinger sued for injuries sustained while he was in captivity, and his parents alleged that their son's detention caused them grave emotional distress. Jurisdiction over Iran was predicated on the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330(a). The United States intervened as a defendant and moved to dismiss the suit on the ground that the international executive agreement between Iran and the United States (see generally *Dames & Moore* v. *Regan*, 453 U.S. 654 (1981)) barred former hostages and their families from suing Iran.

2. The district court dismissed the action (Pet. App. 53a-56a). Relying on the President's long-recognized authority to dispose of private claims against foreign states, the court upheld the international executive agreement settling petitioners' claims against Iran in exchange for the release of the hostages (*id.* at 55a). In addition, the court concluded that the United States Embassy in Tehran did not constitute United States territory for purposes of the FSIA and that Iran therefore enjoyed immunity from suit for torts committed at the embassy (*id.* at 55a-56a).[1]

3. In its initial opinion (Pet. App. 21a-49a), the court of appeals rejected Iran's claim of sovereign immunity, but it nevertheless affirmed the dismissal of the action. Relying

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[1]In dismissing the action, the district court did not distinguish between Persinger's claims and those of his parents.

largely on this Court's decision in *Dames & Moore* v. *Regan, supra*, the court held that the international executive agreement lawfully barred the hostages from suing Iran (Pet. App. 37a-48a).[2]

Despite the favorable judgment dismissing petitioners' claims, the United States petitioned for rehearing on the issue of sovereign immunity. The court granted the government's petition and vacated its prior opinion (Pet. App. 1a-16a). In reexamining the pertinent provisions of the FSIA, the court concluded that it had erred in holding that the statutory definition of "United States" encompassed all territory over which the United States exercises any form of jurisdiction; instead, the court reasoned that the statute encompasses only territory over which the United States exercises territorial sovereignty (*id.* at 8a). The court confirmed its reading of the statute through reliance on the legislative history, which revealed both an overriding congressional intent to conform our law to that of most other nations and a special focus on the problems created by torts, especially traffic accidents, committed by foreign nations in this country (*id.* at 8a-10a).

With respect to the claims of Persinger's parents, the court, with one dissent, neld that the FSIA had not abrogated Iran's immunity for the alleged tort of infliction of

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[2]The court of appeals initially held that Iran was not entitled to sovereign immunity for tortious acts that took place on embassy grounds (Pet. App. 33a-37a). The court relied on the FSIA's definition of "United States," which "includes all territory and waters, continental or insular, subject to the jurisdiction of the United States" (28 U.S.C. 1603(c)). In essence, the court held that this language was broad enough to include all territory over which the United States exercises *any* form of jurisdiction (Pet. App. 34a-36a). Inasmuch as the United States clearly exercises some jurisdiction over its embassies, the court concluded that torts arising out of the Iranian takeover of our embassy occurred within the "United States" for purposes of the FSIA (*ibid.*).

emotional distress even though the parents' injuries unquestionably occurred "in the United States." The court reasoned that it would be anomalous indeed to bar a former hostage's claim for damages while at the same time recognizing the derivative claims of family members (Pet. App. 14a-15a). The court also relied (*id.* at 15a) on the House Report on the FSIA, which stated that "the tortious act or omission must occur within the jurisdiction of the United States." H.R. Rep. 94-1487, 94th Cong., 2d Sess. 21 (1976).

Because its decision on rehearing rested on jurisdictional grounds, the court of appeals found it unnecessary and inappropriate to proceed further, and it accordingly vacated its initial opinion upholding the validity of the international executive agreement (Pet. App. 5a, 16a).

ARGUMENT

The court of appeals' decision that Iran is entitled to sovereign immunity for torts it committed at the United States Embassy in Tehran is correct and warrants no further review by this Court. There is no conflict in the circuits; indeed, the decision below is consistent with the result reached by the only other court of appeals that has addressed the issue. See *McKeel* v. *Islamic Republic of Iran*, 722 F.2d 582 (9th Cir. 1983), cert. pending, No. 83-1890. The decisions of both courts of appeals that American embassies abroad are not part of the "territory and waters, continental or insular, subject to the jurisdiction of the United States" (28 U.S.C. 1603(c)) is mandated by the language of the FSIA, its legislative history, and accepted principles of international law that the FSIA was intended to codify.[3]

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[3]In all events, petitioners' tort claims against Iran are barred by the international executive agreement between Iran and the United States settling those claims in exchange for the release of the hostages. This Court has previously sustained the President's authority to settle claims

1. The subject matter and personal jurisdiction of federal courts over foreign states is derived from the FSIA. In accordance with traditional principles of international law, that Act provides that "[s]ubject to existing international agreements * * * a foreign state shall be immune from the jurisdiction of the courts of the United States." 28 U.S.C. 1604. Section 1605 of the Act sets forth certain exceptions to the general rule of immunity; Section 1605(a)(5) contains one such exception upon which petitioners here rely (emphasis added):

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States * * * in any case—
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> * * * * *
>
> (5) * * * in which money damages are sought against a foreign state *for personal injury or death, or damage to or loss of property, occurring in the United States* and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment * * *.

The "United States" is defined in the FSIA to include "all territory and waters, continental or insular, subject to the jurisdiction of the United States." 28 U.S.C. 1603(c). Thus, if the foreign state's tortious acts or omissions occur "in the United States," the immunity of the foreign state is abrogated (with some exceptions not pertinent here), and there is both subject matter and personal jurisdiction in United

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of United States nationals against Iran in the circumstances of the Iranian hostage crisis. *Dames & Moore* v. *Regan, supra.* Although the court of appeals vacated its initial opinion applying *Dames & Moore* to petitioners' claims, the reasoning employed by the court seems clearly correct and further undermines the need for this Court to consider the threshold jurisdictional issue.

States courts. 28 U.S.C. 1330(a) and (b). The narrow question presented here is whether American embassies abroad are "in the United States" for purposes of the FSIA.

a. The court of appeals' decision is consistent with the most natural reading of the statutory language. To be sure, petitioners' contention (Pet. 9-15) that territory over which the United States exercises any form of jurisdiction constitutes the "United States" for purposes of the FSIA is linguistically possible. In other words, since the United States has jurisdiction to prescribe rules governing certain activities or conduct at American embassies abroad, that power renders embassies, in the most technical sense, "territory * * * subject to the jurisdiction of the United States." 28 U.S.C. 1603(c). As the court below and the Ninth Circuit in *McKeel* both concluded, however, the statutory language admits of a more logical construction — the FSIA abrogates a foreign state's immunity only for tortious acts occurring within the sovereign territorial jurisdiction of the United States.

The statutory provision abrogating a foreign state's immunity from tort liability requires that the tortious injury occur "in the United States." 28 U.S.C. 1605(a)(5). If the FSIA contained no definition of the "United States," that phrase could not conceivably be thought to include our embassies abroad. Put simply, United States embassies are in foreign countries; they are not United States territory. Restatement (Second) of the Foreign Relations Law of the United States § 77 comment a (1965); J. Brierly, *The Law of Nations* 260-261 (6th ed. 1963).

The FSIA's definition of the "United States" (28 U.S.C. 1603(c)) does not require that the foregoing intuitive result be abandoned. The statute's inclusion of that definition is easily explained by the need to make clear whether "United States" was to encompass only the 50 states and the District

of Columbia, or also included various United States territories, commonwealths, possessions, and waters under American sovereignty. The phrase "territory and waters, continental or insular, subject to the jurisdiction of the United States," is a legal term of art used by Congress *not* to refer to our embassies, but to refer both to the 50 states and all other areas over which the United States, and no other nation, exercises sovereign territorial jurisdiction.[4] Indeed, this Court has held that "the United States and all territory subject to the jurisdiction thereof" means "the regional areas — of land and adjacent waters — over which the United States claims and exercises dominion and control as a sovereign power." *Cunard S.S. Co.* v. *Mellon*, 262 U.S. 100, 122 (1923). Embassies, by contrast, are subject to the territorial jurisdiction of the host state; although they may be accorded certain immunities by treaty or customary international law, they are not part of the sending state's sovereign domain.[5]

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[4]Virtually identical definitions of "United States" are included in a host of other statutes as a legal term of art to define the geographic applicability of the statutes' substantive provisions. See, *e.g.*, 8 U.S.C. 1185; 18 U.S.C. 5; 21 U.S.C. 802; 22 U.S.C. 401, 408a, 450, 451, 462, 465; 50 U.S.C. 82, 191. Some of these statutes (18 U.S.C. 5; 21 U.S.C. 802) state expressly that the definition of "United States" is used in the territorial sense, while others not only employ the definition in that sense but also involve subjects that could not possibly encompass American embassies. See 8 U.S.C. 1185 (entry to and departure from the United States by aliens and citizens); 22 U.S.C. 401, 408a (export of war material from the United States); 22 U.S.C. 450, 451, 462, 465, 408a (authority to detain or force vessels to leave the United States and to grant or restrict access to American ports); 47 U.S.C. 34-39 (regulation of submarine cables); 50 U.S.C. 82 (procurement of ships by government during war).

[5]See, *e.g.*, *Meredith* v. *United States*, 330 F.2d 9, 10-11 (9th Cir.), cert. denied, 379 U.S. 867 (1964); *Fatemi* v. *United States*, 192 A.2d 525, 527 (D.C. 1963) (embassy not the territory of sending state); Restatement (Second) of the Foreign Relations Law of the United States § 77 comment a (1965).

Petitioners' argument depends on the fact that persons or activities at our embassies are subject to some form of jurisdiction by the United States. See, *e.g., United States* v. *Erdos*, 474 F.2d 157 (4th Cir.), cert. denied, 414 U.S. 876 (1973); *United States* v. *Pizzarusso*, 388 F.2d 8 (2d Cir.), cert. denied, 392 U.S. 936 (1968). Petitioners' reliance on *Erdos* and *Pizzarusso* is misplaced. Both were criminal cases, involving the United States' assertion of jurisdiction over individual defendants. We are unaware of any case involving the exercise of jurisdiction by a United States court over a *foreign state* for conduct or activity occurring within the territorial jurisdiction of that foreign state. Accordingly, the phrase "in the United States" as used in Section 1605(a)(5) should be given its natural reading, and not the strained construction urged by petitioners.

b. A review of the legislative purpose and history of the FSIA confirms that Congress never intended to assert jurisdiction over foreign states for acts occurring wholly within their own territory.[6] One of Congress's principal purposes in enacting the FSIA was to make United States law on sovereign immunity consistent with international law. See H.R. Rep. 94-1487, 94th Cong., 2d Sess. 7 (1976); S. Rep. 94-1310, 94th Cong., 2d Sess. 20 (1976); *Jurisdiction of U.S. Courts in Suits Against Foreign States: Hearings on H.R. 11315 Before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary*, 94th Cong., 2d Sess. 29 (1976) (remarks of Bruno Ristau); *id.* at 33 (remarks of Monroe Leigh) [hereinafter cited as *1976 Hearings*]. Codifications by other states and international organizations have provided that a state

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[6]Indeed, the general rule is that " 'legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States . . . .' " *United States* v. *Spelar*, 338 U.S. 217, 222 (1949) (quoting *Foley Bros.* v. *Filardo*, 336 U.S. 281, 285 (1949)).

loses its sovereign immunity for tortious acts only when such acts occur in the territory of the forum state. See, *e.g.*, European Convention on State Immunity and Additional Protocol, Art. 11, Council of Europe, No. 74 (1972), *reprinted in* United Nations Legislative Series, *Materials on Jurisdictional Immunities of States and Their Property*, U.N. Doc. ST/LEG/SER.B/20, at 159 (1982) [hereinafter cited as *U.N. Legis. Ser.*] ("A Contracting State cannot claim immunity * * * [in a tort case] if the facts which occasioned the injury or damage occurred in the territory of the State of the forum * * *."); [7] State Immunity Act 1978, ch. 33, § 5 (U.K.), *U.N. Legis. Ser.* 43; Foreign Sovereign Immunity Act of 1981, § 6 (South Africa), *U.N. Legis. Ser.* 36-37; State Immunity Act 1979, Pt. II, § 7 (Singapore), *U.N. Legis. Ser.* 30. Indeed, we are not aware of any instance in which the courts of one state have exercised jurisdiction over the tortious conduct of another foreign state within its own territory.[8]

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[7] In testifying in support of the FSIA, the State Department's Legal Adviser noted that the FSIA was basically consistent with the European Convention. *1976 Hearings* 37.

[8] Not only did Congress wish to conform our practice to that of other nations, but in so doing it was careful to ensure that the minimum contacts necessary to satisfy due process would be present in any action against a foreign state. In Section 1330(b) of the FSIA, Congress intended to provide a "Federal long-arm statute over foreign states" that would satisfy due process requirements by having the "immunity provisions * * * [Sections 1605-1607] prescribe the necessary contacts which must exist before our courts can exercise personal jurisdiction." H.R. Rep. 94-1487, *supra*, at 13. But if the tortious conduct is carried out totally within another nation's territory, it is doubtful that the necessary minimum contacts will be present —the foreign state may not have availed itself of the privileges of our laws, and it can hardly be said that the state would have anticipated litigating the action here. See, *e.g.*, *Helicopteros Nacionales de Columbia, S.A.* v. *Hall*, No. 82-1127 (Apr. 24, 1984); *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980). Since the conduct and activities carried on by a foreign state at our embassies often will not meet the minimum due process criteria, the

Moreover, Congress's intent to confine the scope of the FSIA's tort exception to acts or omissions occurring in United States territory is made clear by the examples cited in the legislative history. Section 1605(a)(5) is "directed primarily at the problem of traffic accidents" in this country caused by automobiles owned by foreign embassies. H.R. Rep. 94-1487, *supra*, at 20-21; *id.* at 7. State Department Legal Adviser Monroe Leigh, testifying in support of the FSIA, emphasized that Section 1605(a)(5) "would govern automobile accident cases and other tort actions. It would deny the defense of sovereign immunity with respect to many torts that occur in the United States." *1976 Hearings* 27. See also *id.* at 58 (remarks of Peter D. Trooboff) (FSIA would eliminate immunity for "the negligent operation of a motor vehicle * * * in the District of Columbia"); *id.* at 95 (remarks of Michael M. Cohen) (Section 1605(a)(5) "removes the defense [of immunity] for most tort suits arising here").[9]

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exercise of jurisdiction under the FSIA would frustrate Congress's intent to have the immunity provisions themselves prescribe the necessary minimum contacts.

[9]The same conclusion is suggested in the hearings on the 1973 predecessor bill to the FSIA, which contained a similar exception to immunity for torts occurring in the United States, but no definition of "United States." Bruno Ristau, one of the Act's principal spokesmen, explained to the House that:

> We would like, based on our experiences as a litigant abroad to subsume to the jurisdiction of our domestic courts foreign governments and foreign entities who engage in certain activities *on our territory* to the same extent that the U.S. Government is already at the present time subject to the jurisdiction of foreign courts, when it engages in certain activities on their soil.
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> * * * * *
>
> [W]e would like to afford to *our local citizens* and entities who deal with foreign governments *in the United States* effective redress through the instrumentality of our courts. If a dispute arises

Thus, Congress's general goal of conforming our laws to the principles espoused by other nations, as well as the more specific goal of addressing the problem of traffic accidents and other routine negligence claims involving foreign officials in this nation, supports the construction of the statute adopted by the court below and the Ninth Circuit in *McKeel*.[10]

c. In deciding what Congress intended when it specified that the tortious injury must occur "in the United States," the practical effects of petitioners' argument must be taken into account.[11] Petitioners' construction of the FSIA creates potentially serious problems for the conduct of our foreign relations. For example, if a vehicle owned by the French Government were involved in an automobile accident on

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as a result of an activity which a government carries on *in this country*, the most appropriate place to resolve such a dispute would be through the courts * * *.

Immunities of Foreign States: Hearings on H. R. 3493 Before the Subcomm. on Claims and Governmental Relations of the House Comm. on the Judiciary, 93d Cong., lst Sess. 29 (1973) (emphasis added). Nothing in the legislative history of the FSIA as finally enacted indicates that Congress intended to expand the scope of the statute's coverage when it included a definition of "United States."

[10]Petitioners apparently contend (Pet. 10-11) that because Congress did not limit the scope of Section 1605(a)(5) solely to traffic accidents, all torts must fall within its purview, irrespective of where the tortious act occurs. But the focus of the legislative history on traffic accidents suggests that Congress only grappled with the problems engendered by garden variety torts committed by foreign nations while in United States territory. There is simply no evidence in the legislative history that Congress intended to abrogate foreign states' immunity for torts occurring anywhere else.

[11]Petitioners criticize the court of appeals for considering the policy implications of their argument (Pet. 14). But the court was careful to note that it "offer[ed] these considerations not as policies we choose but as throwing light on congressional intent" (Pet. App. 10a-11a).

the grounds of the United States Embassy in West Germany, petitioners' construction of the FSIA would make the French Government subject to suit in the United States. There is no basis in international law or practice for such an assertion of jurisdiction over a foreign state by our courts. Such novel assertions of jurisdiction would be clearly inconsistent with foreign nations' understanding of their own sovereignty.[12]

Furthermore, if the United States exercised jurisdiction over foreign states on the basis of minimal contacts with our embassies, such states might hesitate in providing services to our embassies or consulates. Under petitioners' construction of the FSIA, if a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state (see 28 U.S.C. 1603(a)) negligently repaired utilities at an American embassy or negligently provided protective services during disturbances or ambulance services in an emergency, any individual on embassy premises injured by such negligence could sue the host state in the United States.[13]

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[12]Petitioners suggest that jurisdiction may be exercised here due to the extraordinary nature of the international crimes committed by Iran (Pet. 13-14). We agree that Iran's actions clearly constituted a crime under international law, see *Case Concerning United States Diplomatic and Consular Staff in Tehran*, 1980 Int'l Ct. Justice 200, and we also agree that under some circumstances a *nation* may exercise jurisdiction over *individuals* suspected of committing international crimes, even when the crimes do not occur in the territory of the forum. See J. Sweeney, C. Oliver & N. Leech, *Cases and Materials on The International Legal System* 120-121 (2d ed. 1981). But the point here is that Congress has not chosen to authorize private tort actions against *states* guilty of international law violations occurring overseas. The legislative history of the FSIA simply does not manifest any intent to confer such jurisdiction on United States courts.

[13]Petitioners discount these potential problems by noting (Pet. 14) that "injuries on United States military bases overseas are covered by various Status of Forces agreements" and hence are not covered by the FSIA (see 28 U.S.C. 1604). Needless to say, the United States maintains countless enclaves abroad that are not covered by any such agreements.

Similarly, an expansive, non-territorial interpretation of the "United States" would adversely affect the government's relationship with foreign embassies in this country. If, through reciprocity or parity of reasoning (see 6 M. Whiteman, *Digest of International Law* 580-582 (1968)), the United States were to be subjected to foreign court jurisdiction for actions arising in connection with our agents' conduct on foreign embassy premises here, we might hesitate to carry out necessary functions because of that risk. For example, members of the Secret Service Uniformed Division or other law enforcement agencies could not enter foreign embassy premises to assist in quelling a disturbance, even if requested to do so by an Ambassador, without creating the possibility of suit against the United States by a private party in the foreign state's courts. By the same token, disputes arising from the provision of commercial services to foreign embassies by entities of the United States government (perhaps including the District of Columbia, cf. 28 U.S.C. 1603(a)) would, under petitioners' reasoning, be properly heard in the sending state's courts. This result not only is illogical but also would upset the settled expectations that facilitate relations between the United States and foreign embassies located here.

There is no indication that any of these far-reaching consequences were considered by Congress, and it is unlikely that Congress would have imposed them without explicitly making clear its intent to do so. See *Weinberger* v. *Rossi*, 456 U.S. 25, 31-32 (1982).[14]

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[14]As the court below noted (Pet. App. 11a):

> If Congress had meant to remove sovereign immunity for governments acting on their own territory, with all of the potential for international discord and for foreign government retaliation that that involves, it is hardly likely that Congress would have ignored those topics and discussed instead automobile accidents in this country.

2. The claims of Persinger's parents are similarly barred by sovereign immunity. Without question, their causes of action for intentional and negligent infliction of emotional distress are derivative of their son's claims. Immunity bars their claims for the same reasons that it precludes the underlying actions of former hostages. Cf. *Gaspard* v. *United States*, 713 F.2d 1097, 1101-1102 (5th Cir. 1983) (dismissing derivative claims for emotional distress brought by members of servicemen's families under *Feres* doctrine), cert. denied, No. 83-6233 (May 14, 1984); *Lombard* v. *United States*, 690 F.2d 215, 223-226 (D.C. Cir. 1982) (same), cert. denied, No. 82-1443 (June 13, 1983). As the court below reasoned, "[i]t would be anomalous to say that Congress intended to deny a remedy to [a hostage] — a hostage imprisoned and physically abused for more than a year — and yet also intended to expose Iran to a suit by his parents for their emotional distress" (Pet. App. 14a).[15]

The court of appeals further concluded (Pet. App. 15a) that even if the claims were not so clearly derivative, Congress did not intend to permit such suits. As the House Report on the FSIA stated (H.R. Rep. 94-1487, *supra*, at 21 (emphasis added)):

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[15]We note that petitioners' argument not only is anomalous but stretches the infliction of emotional distress theory of tort liability almost beyond recognition. A critical aspect of that theory is geographic proximity; that is, when the tortious conduct is directed at a third person, the immediate family members must have been present to witness that conduct. See, *e.g.*, *Culbert* v. *Sampson's Supermarkets, Inc.*, 444 A.2d 433 (Me. 1982); *Portee* v. *Jaffee*, 84 N.J. 88, 98-100, 417 A.2d 521, 527 (1980); *Dillon* v. *Legg*, 68 Cal. 2d 728, 739-741, 441 P.2d 912, 920, 96 Cal. Rptr. 72, 80 (1968); Restatement (Second) of the Law of Torts § 46(2)(a) (1965). Without such a requirement, almost any event of notoriety could lead to tortious liability in every nation on the basis of satellite news broadcasts. Persinger's parents do not allege that they were in Iran at any time between November 4, 1979, and January 19, 1981, and they did not perceive the indignities visited upon their son by virtue of their unaided senses. Petitioners' theory, therefore, is untenable.

> It [Section 1605(a)(5)] denies immunity as to claims for personal injury or death, or for damage to or loss of property, caused by the tortious act or omission of a foreign state or its officials or employees, acting within the scope of their authority; *the tortious act or omission must occur within the jurisdiction of the United States.*[16]

The court of appeals thus determined that the tortious conduct itself, in addition to the injury, must occur in the United States before immunity is abrogated. Accord, *Asociacion de Reclamantes* v. *United Mexican States*, 735 F.2d 1517, 1525 (D.C. Cir. 1984); *Olsen* v. *Government of Mexico*, Nos. 83-5626 and 83-5629 (9th Cir. July 16, 1984), cert. pending, No. 84-295; *In re Sedco*, 543 F. Supp. 561, 567 (S.D. Tex. 1982). There is no compelling reason for the Court to review that conclusion, particularly in a case arising out of a factual situation concededly "uncommon if not unique" (83-1890 Pet. 17).

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[16]Petitioners correctly note (Pet. 16-18) that the language of the House Report was initially drafted to accompany the 1973 version of the FSIA. That bill (H.R. 3493, 93d Cong., 1st Sess. (1973)) provided that, to be actionable, the injury must have been "caused by the negligence or wrongful act or omission in the United States of that foreign state." Although Section 1605(a)(5) of the FSIA as enacted in 1976 does not specify that the tortious conduct, in addition to the injury, must occur in the United States, nothing in the legislative history suggests that Congress intended to change the substance of the provision. The affidavit of a former State Department lawyer, offered by petitioners for the first time in this Court (Pet. App. 61a-64a), does not suggest otherwise. Mr. Sandler states only that "it is entirely possible" that an "inadvertent mistake" occurred in revising the 1973 section-by-section analysis to conform to the bill ultimately enacted by Congress; he does not state that any mistake in fact occurred.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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